

**ARTICLE 4. TRANSPORTATION OF MUNICIPAL SOLID WASTE
FOR DISPOSAL; RECYCLABLE MATERIALS TO MARKET**

4.01 Transportation. Contractor shall transport and deliver to the Disposal Facility all Municipal Solid Waste that is not recycled. Contractor shall transport and deliver (or arrange for the transportation and delivery of) all Recyclable Materials, including Source-Separated Recyclable Materials and Recyclable Materials recovered from MSW, to a purchaser, a permitted recycling facility, or a person who will use the materials in a process or product and will not dispose of them. Contractor shall arrange for the Transportation and delivery of all Source-Separated Yard Trimmings to a permitted off-site composting facility or biomass-fuel electrical generating station. Contractor shall transport and deliver (or arrange for the transportation and delivery of) Hazardous Waste, Designated Waste and other materials which are encountered at the Station and which cannot be accepted at the Disposal Facility to an appropriately permitted disposal facility. Routes within City over which vehicles travel to effect this transport and delivery shall be selected to minimize inconvenience and disturbance to the public and shall be subject to the approval of City.

Contractor shall use due care to prevent Municipal Solid Waste or Recyclable Materials from being spilled or scattered during transport. All vehicles hauling materials from the Station shall be enclosed or have other appropriate covering as approved by City. If any Municipal Solid Waste or Recyclable Materials are spilled within the City, Contractor shall immediately clean up all spilled materials, whether on private or public property.

No Recyclable Materials which have been delivered to the Station already separated and no materials which have been processed at the Station for Recycling may be disposed of (1) on land, or (2) with the sole exception of wood, through Transformation, without the prior written consent of City.

No materials of any kind may be disposed of on land at any location other than the Disposal Facility. No materials of any kind may be disposed of in water or in the atmosphere. Notwithstanding the foregoing, Contractor may, and shall, dispose (or arrange for the disposal) of Hazardous Waste which it identifies among the materials

delivered to the Station at permitted hazardous waste disposal facilities, subject to City reimbursement under Section 5.02.D.

Transfer Vehicles shall not depart the Station to deliver Municipal Solid Waste to Kirby Canyon between the hours of 4:30 p.m. and 5:30 p.m., Monday through Friday, except California State holidays. Transfer Vehicles shall not depart Kirby Canyon to return to the Station between the hours of 7:15 a.m. and 8:30 a.m., Monday through Friday, except California State holidays.

4.02 Parking and Maintenance of Transfer Vehicles. Contractor may park empty Transfer Vehicles in the fenced and paved operational area of the Station Site, which does not include the office parking lot. Transfer Vehicles may not be fueled, maintained or repaired in this area. Contractor must make arrangements, at its sole costs and expense, for an off site location at which fueling, maintenance and repair of Transfer Vehicles will be carried out. Transfer Vehicles containing Municipal Solid Waste must be parked on the tipping floor, so that liquids from the Municipal Solid Waste drain only to the tipping floor.

ARTICLE 5. COMPENSATION TO CONTRACTOR

5.01 General. The payments provided for in Sections 5.02 through 5.05 and the share of revenues provided in Section 5.06 are the full, entire and complete compensation due to Contractor for furnishing all labor, equipment, materials and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement, including but not limited to the operation of the Station in accordance with Article 3, and the transportation of materials in accordance with Article 4. The compensation provided for in this Article includes all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate to perform the services in accordance with this Agreement. Notwithstanding the foregoing, if a possessory interest tax is assessed against Contractor pursuant to California Revenue and Taxation Code Section 107, Contractor shall pay such tax but City shall reimburse Contractor for the amount of tax paid upon receipt of evidence of the tax assessment and payment. Contractor shall cooperate with City, if requested, in City's effort to seek a reduction in or removal of such tax, including filing a protest of the tax. Expenses incurred by Contractor in so doing will also be reimbursed by City.

5.02 Basic Annual Payment.

A. Contractor will be paid a Basic Annual Payment for receipt, processing and transfer of up to two hundred eighty thousand (280,000) Tons per year of MSW and Yard Trimmings delivered to the Station by the Participating Agencies, their Designated Haulers, and the Designated Haulers of communities in the Extended Service Area. The Basic Annual Payment in effect as of the Effective Date is _____ Dollars (\$_____).

B. The Basic Annual Payment set forth in Section 5.02.A shall be adjusted as of July 1, 2007 and as of July 1 annually thereafter to reflect changes in the San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (All Urban Consumers: 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics ("the Index"). The Index level as of December, 2005 (i.e., 203.4) shall be the Base Index and shall be compared with the

Index as of December in subsequent years. For example, the Basic Annual Payment shall be adjusted on July 1, 2007 by multiplying _____ Dollars (\$_____) by one (1) plus the percentage change from the Base Index to the Index level as of December 2006. The parties recognize that the amount of the monthly installment payment will change each August to reflect the change to the Basic Annual Payment taking effect each July.

C. The Basic Annual Payment will be paid as provided in Section 6.01.

5.03 Tipping Fee for Excess Tonnage.

A. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area during (i) the period January 1, 2008 through June 30, 2008 or (ii) the period July 1, 2014 through December 31, 2014 exceeds One Hundred Forty Thousand (140,000) Tons, the Contractor shall be paid a Tipping Fee for each Ton in excess of 140,000 Tons.

B. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area exceeds Two Hundred Eighty Thousand (280,000) Tons in any fiscal year commencing July 1, 2008, Contractor shall be paid a Tipping Fee for each Ton in excess of 280,000 Tons as provided in Section 5.03.C.

C. The Tipping Fees earned for Excess Tonnage in effect as of the Effective Date shall be:

For MSW: \$_____ per Ton

For Yard Trimmings: \$_____ per Ton.

D. The Tipping Fees set forth in Section 5.03.C shall be adjusted as of July 1, 2007 and as of each July 1 thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

E. Tipping Fees earned, if any, will be paid as provided in Section 6.02.

5.04 Gate Fees for Publicly Hauled Waste.

A. Contractor will be paid a Gate Fee for receipt, processing and transfer of Publicly Hauled Waste delivered to the Station whether from within the Primary Service Area or, if allowed by City, from within the Extended Service Area. This Gate Fee will be, as of the Effective Date, Five Dollars and Fifty Cents (\$5.50) per Cubic Yard.

B. The Gate Fee for Publicly Hauled Waste set forth in Section 5.04.A shall be adjusted as of July 1, 2007 and as of July 1 annually thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

C. Gate Fees for Publicly Hauled Waste will be paid as provided in Section 6.03.

5.05 Reimbursement of Certain Costs.

A. The Basic Annual Payment provided in Section 5.02 is intended to cover all costs of operating the Station other than those incurred by Contractor

1. to arrange for transport and legal disposal of Hazardous Wastes and Sharps identified through the Hazardous Waste Exclusion Program or during subsequent processing at the Station, radioactive wastes detected at the scales, and Sharps delivered to the Drop Off Facility; and

2. to purchase replacement parts for stationery equipment listed on Exhibit H-1.

Contractor will not receive reimbursement for costs of disposal of compressor oils, switches containing mercury, or CFCs removed from appliances delivered to the Station or for Hazardous Wastes generated by the Contractor's own operations, all of which are included in the Basic Annual Payment.

B. Reimbursement of actual and reasonable costs incurred will be made as provided in Section 6.04.

5.06 Contractor's Share of Recycling Revenues. As an incentive to Contractor to maximize both the quantity and quality of materials recovered and successfully marketed for recycling, Contractor will be entitled to retain a percentage of gross revenues from the sale of

- (i) Materials recovered from MSW;
- (ii) Source Separated Recyclable Materials delivered by the Participating Agencies' Designated Haulers;
- (iii) Source Separated Yard Trimmings delivered by the Participating Agencies' Designated Haulers;
- (iv) Materials delivered to the Drop-Off Center.

The percentage of gross revenue to be retained by Contractor is dependent on the level of recovery achieved, as set forth on Exhibit P.

The method by which Contractor will share revenues as provided above is specified in Section 6.05.

ARTICLE 6. PAYMENT AND REVENUE SHARING PROCEDURES

6.01 Basic Annual Payment. The Basic Annual Payment provided for in Section 5.02 shall be paid in arrears in 12 equal monthly installments, with the first payment earned as of January 31, 2008. City will pay each installment within fifteen (15) business days after receipt of the monthly statement from Contractor required by Section 6.06.

6.02 Tipping Fee for Excess Tonnage. If Contractor earns a Tipping Fee provided for in Section 5.03 for processing more than 280,000 Tons of MSW and Yard Trimmings during a fiscal year, City will pay the amount due within fifteen (15) business days after receipt of the monthly statement from Contractor required by Section 6.06 showing that a Tipping Fee was earned during the preceding month.

6.03 Publicly Hauled Waste. Contractor will pay to City (by deposit to a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month, the amount of all public use fees collected, billed or billable during the immediately preceding month from persons delivering Publicly Hauled Waste, less the amount of the Gate Fee for processing Publicly Hauled Waste then in effect under Section 5.04. These payments will be reflected in the statement from Contractor required by Section 6.06. If Contractor extends credit to Persons delivering Publicly Hauled Waste, it does so at its risk and is solely responsible for inability to collect sums due.

6.04 Cost Reimbursements. If Contractor incurs costs which are reimbursable under Section 5.05, it shall include those costs, together with information sufficient to substantiate the amount and purpose of each expense, in the statement from Contractor required by Section 6.06. City will pay the cost reimbursements due within fifteen (15) business days after its receipt of a timely and complete monthly statement.

6.05 Revenues Received from Sale of Recyclable Materials.

A. Contractor shall remit to City the applicable percentage of the gross sales price of all materials delivered to the Station which are not disposed of at the Disposal Facility, including, but not limited to (1) materials recovered by Contractor

from Municipal Solid Waste, (2) Source-Separated Recyclable Materials delivered by Designated Haulers, and (3) Recyclable Materials delivered to the dropoff center.

B. Contractor shall pay to City (by deposit into a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month the percentage of the gross sales price earned during the preceding month from the sale of material described in Section 6.05.A to which City is entitled under Section 5.06 and Exhibit P, based on the Recycling Level achieved during that month as shown on the monthly statement from Contractor required by Section 6.06. The amount to be paid to City will be all revenues earned that Contractor is not entitled to retain under Section 5.06.

6.06 Monthly Contractor's Statement.

A. On or before the fifteenth (15th) day of each month, Contractor shall submit to City a statement showing amounts due to Contractor and City under Sections 6.01 through 6.05. With respect to amounts due under Section 6.05, the statement shall include at least the following information:

1. the amount (in Tons) of Source-Separated Recyclable Materials delivered to the Station during each day of the preceding month by each of the Participating Agencies and/or their Designated Haulers;

2. the amount (in Tons or cubic yards, whichever is applicable) of Recyclable Materials delivered to the Buyback/Dropoff Center during each day of the preceding month;

3. the amount (in Tons) of Recyclable Materials recovered by Contractor from Municipal Solid Waste delivered to the Tipping Floor;

4. the amount (in Tons) of Recyclable Materials sold by type and grade, and the total sales price;

5. a daily accounting showing the following information for each sales transaction:

- date of sale;

- type of material sold and grade, if applicable;
- quantity of material sold;
- unit price;
- total revenue due from sale;
- name and address of purchaser; and
- a copy of the sales invoice, sales contract or other document evidencing transfer of title.

Contractor shall utilize the appropriate reporting forms in Exhibit O.

City will consider adopting reporting systems and procedures which will protect the confidentiality of parties to brokered transactions, if Contractor advises that doing so would enhance the marketability or market price of Recyclable Materials. City has no obligation to adopt or implement any such system and its decision on this matter will be in its sole discretion.

B. City may request additional information regarding a report within thirty (30) days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report and payment, or within thirty (30) days after receipt of the additional information if such information is requested, of any dispute as to the accuracy of the report and the amount of the payment. City may withhold payment on disputed items or on charges to City that are not properly documented.

6.07 Adjustments to, and Annual Reconciliation of, Revenues from Sale of Recyclables.

A. If Contractor and purchasers adjust the sales price for materials after the initial sales transaction to account for agreed-upon differences in quantities (due to moisture loss, for example) or quality (due to grade determinations), Contractor shall notify City within one hundred twenty (120) days after the close of the month in which the sale was initially made and an adjustment shall be made (up or down) in the amount of revenue due to City to reflect the ultimate sales price. This adjustment

procedure does not allow Contractor to reduce amounts owed City due to purchaser default; credit sales are at the sole risk of Contractor.

B. The parties shall, during July of each year, perform an annual reconciliation of the allocation of recycling revenues by calculating the annual recycling level for the preceding fiscal year per Exhibit S, determining the corresponding revenue allocations per Exhibit P, and applying those percentages to the total amount of revenue earned during that fiscal year. (In July 2008, the reconciliation will cover the previous six months.) The resulting dollar amounts will be compared with the sum of the monthly payments to the City and any adjustment (which is not expected to be large) made by means of a separate payment from Contractor to the City or from the City to Contractor made within thirty (30) days after the amount of the adjustment is determined.

6.08 Host Fee Reports. In order to assist City in separately collecting the Host Fee from the other Participating Agencies, on or before the fifteenth (15th) day of each month, Contractor shall submit to City a report showing: (1) the amount (in Tons or yards, whichever is applicable) of Municipal Solid Waste delivered to the Station on each day of the preceding month; (2) the total amount of Municipal Solid Waste (in Tons or yards) delivered to the Station during the preceding month; and (3) a breakdown showing how many Tons or yards of Municipal Solid Waste were received from (i) each of the Participating Agencies, (ii) from cities that are not Participating Agencies, if any, and (iii) from all other sources during the preceding month.

City may request additional information regarding a report within thirty (30) days from its receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report, or within thirty (30) days after receipt of the additional information, if such information was requested, of any dispute as to the accuracy of the report.

ARTICLE 7. INDEMNITY, INSURANCE, BOND

7.01 Indemnification. Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

7.02 Insurance.

A. Types and Amounts of Coverage. Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability.

Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain Employer's Liability insurance in an amount not less than Ten Million Dollars (\$10,000,000) per accident or disease. Provided, however, that Contractor shall not be obligated to carry workers' compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) provides a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and

(iii) provides a certified copy of the permit renewing authorization for such self-insurance at least ten (10) days before expiration of the old permit.

2. Comprehensive General Liability (and Automobile Liability).

Contractor shall maintain Comprehensive General Liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this Subsection shall include:

- (a) Premises Operations, including use of owned and non-owned equipment;
- (b) Independent Contractor's Protective;
- (c) Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another person;
- (d) Personal Injury Liability with Employment Exclusion deleted;
- (e) Broad Form Blanket Contractual, including Contractor's Obligation under Section 7.01, with no exclusions for bodily injury, personal injury or property damage;
- (f) Owned, Non-Owned, and Hired Motor Vehicles;
- (g) Broad Form Property Damage, including Completed Operations.

The Comprehensive General Liability insurance required by Section 7.02.A.2 shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG 0001). If coverage is not obtainable, Contractor must arrange for "tail coverage" on a claims made policy to protect City from claims filed within four years after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or

termination. Any excess or umbrella policies shall be on a "following form" basis. The policy limit shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

3. Hazardous Materials Storage and Transport. Contractor shall maintain insurance coverage of not less than Five Million Dollars (\$5,000,000) per location for personal injury, bodily injury and property damage arising out of the sudden and accidental release of any hazardous materials or wastes during storage at the Station and transport of such materials by vehicles owned, operated or controlled by Contractor in the performance of the services required under this Agreement. This insurance shall also cover costs associated with remediation of the released hazardous materials. The policy limit for such coverage shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

4. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) physical damage insurance covering (a) the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than Fifty Thousand Dollars (\$50,000), and (b) Recyclable Materials at the Station Site or in transit to a purchaser, with no deductible or self-insured retention. Regardless of the foregoing, for the tractors and trailers used in providing services under this Agreement Contractor shall be allowed to self-insure for physical damage provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses. Contractor must also carry comprehensive physical damage insurance with a deductible of not more than One Hundred Thousand Dollars (\$100,000), applicable to a casualty occurring while such vehicles are parked.

5. Pollution Liability. Contractor shall maintain Contractor's pollution liability insurance with limits in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate covering claims for on-site,

under-site, or off-site bodily injury and property damage and remediation as a result of pollution conditions arising out of its operations under this Agreement.

The insurance policies required by this Section 7.02 shall be issued by an insurance company or companies admitted to do business in the State of California, and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better. However, if Contractor demonstrates that such insurance is unavailable on commercially reasonable terms from insurers with such ratings, it may request approval of insurers with a rating of not less than A+ VI in the then most recent edition of Best's Insurance Reports and City shall not unreasonably refuse such a request. Under no circumstances shall the insurer be rated less than "A+."

B. Required Endorsements.

1. The Worker's Compensation and Employers' Liability policy shall contain endorsements in substantially the following form:

"Thirty (30) days prior written notice shall be given to the City of Sunnyvale in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk and Insurance Manager

CITY OF SUNNYVALE
P.O. Box 3707
456 West Olive Avenue
Sunnyvale, CA 94086

"Insurer waives all right of subrogation against City and its officers and employees arising from work performed for City."

2. The Comprehensive General Liability, Hazardous Materials and Pollution Liability policies shall contain endorsements in substantially the following form:

(a) "Thirty (30) days' prior written notice shall be given to the City of Sunnyvale in the event of cancellation or non-renewal of this policy, reduction in coverage, or reduction in aggregate limits due to payment of claims. Such notice shall be sent to:

Risk and Insurance Manager
CITY OF SUNNYVALE
P.O. Box 3707
456 West Olive Avenue
Sunnyvale, CA 94086

- (b) "The City of Sunnyvale, its officers, employees, and agents, the City of Palo Alto, and the City of Mountain View are additional insureds on this policy."
- (c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Sunnyvale, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (d) "Inclusion of the City of Sunnyvale, Palo Alto and Mountain View as an insured shall not affect the Participating Agencies' rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Participating Agencies in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. The physical damage policy shall contain the following endorsements:

- (a) Notice of cancellation, reduction in coverage or non-renewal, as provided in Subsection B.2(a).
- (b) Cross liability endorsement, as provided in Subsection B.2(d).
- (c) Waiver of subrogation against City.
- (d) Proceeds to be paid to City, to the extent of loss of or damage to Recyclable Materials.

C. Delivery of Proof of Coverage. No later than thirty (30) days before the commencement of operations (i.e., on or before November 30, 2007), Contractor shall furnish City certificates of each policy of insurance on a Standard

ACORD form substantiating that each of the coverages required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term.

D. Other Insurance Requirements

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 7.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 7.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 7.01. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

3. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

7.03 Faithful Performance Bond. Not later than ten (10) days before the Effective Date (i.e., on or before _____, 2007), Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Two Million Dollars (\$2,000,000).

The form of the bond shall be as set out in Exhibit Q. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twenty-four (24) months, or until _____, 2009, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than ninety (90) days before the expiration of the initial bond, the Contractor shall furnish either a replacement bond or a continuation certificate substantially in the form attached as Exhibit Q-1, executed by the surety.

The principal amount of the bond shall be increased in 2011 by the same percentage that the Basic Annual Payment provided in Section 5.02 has been cumulatively increased, rounded to the nearest Twenty Five Thousand Dollars (\$25,000).

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term.

7.04 Alternative Security. City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 7.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

7.05 Hazardous Waste Indemnification. Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the City against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any

Hazardous Wastes at any place where Contractor stores or disposes of Hazardous Wastes pursuant to this Agreement except to the extent that Contractor can demonstrate that such claim arises solely from Hazardous Wastes collected and deposited by City employees acting within the ordinary course and scope of their employment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City from liability.

7.06 Integrated Waste Management Act Indemnification. Contractor agrees to indemnify and hold harmless the City against all fines and/or penalties imposed by the California Integrated Waste Management Board (CIWMB) or the Local Enforcement Agency (LEA): a) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by the CIWMB or the LEA; b) caused or contributed to by the Contractor's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

8.01 Corporate Status. Contractor is a _____ duly organized, validly existing and in good standing under the laws of the State of _____, and is qualified to do business in the State of California. It has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

8.02 Corporate Authorization. Contractor has the authority to enter into and perform its obligations under this Agreement. [The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law, its Articles of Incorporation, its Bylaws or otherwise to authorize the execution of this Agreement.] The person signing this Agreement on behalf of Contractor has authority to do so.

8.03 Statements and Information in Proposal. The Proposal submitted to City by Contractor and information submitted to City supplementary thereto, on which City has relied in entering into this Agreement does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

8.04 No Conflict with Applicable Law or Other Documents. Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of any existing applicable law; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

8.05 No Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way,

would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

8.06 Financial Condition. Contractor has made available to City information on its financial condition [and that of _____]. Contractor recognizes that City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

8.07 Expertise. Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.